

REMARKS/ARGUMENTS

Claims 1, 15-18, 26, 28-32, 35, 42, 43, 47, 50, 58, 60, 61 and 63-65 remain rejected under § 102(b) as being anticipated by U.S. Patent no. 5,737,060 to *Kasha*. Claims 1-6, 9, 13, 17, 22, 25, 26, 28, 29, 31, 32, 43-46, 54, 57, 58 and 60 stand rejected under § 102(e) as being anticipated by U.S. Patent no. 5,953,102 to *Berry*. Claims 1, 2, 5, 6, 10, 13, 17, 26, 30, 31, 35-37, 43, 58 and 62-65 also stand rejected under § 102(e) as being anticipated by U.S. Patent no. 6,364,845 to *Duffy et al.* Claims 7, 8, 41 stand rejected as being obvious over *Duffy et al.* in view of U.S. Patent no. 6,364,845 to *Lawton*. Applicant respectfully disagrees.

Nevertheless, for purposes of expediting the allowance of the present application only, Applicant has amended the claims as discussed herein without prejudice. Applicant reserves the right to pursue the subject matter of the original claims by continuation and/or divisional practice. At this time, Applicant respectfully requests that the Examiner reconsider the application in view of the amendment and comments herein. Claims 1-10, 13, 15-18, 22, 25, 26, 28-32, 41-47, 50, 54, 57, 58, 60 and 61 have been cancelled. Claims 11, 12, 14, 19-21, 23, 24, 27, 33-40, 48, 49, 51-53, 55, 56, 59 and 62-65 remain pending. Applicant submits that the case is in condition for allowance.

(1) Claims Signified as Allowable

The Examiner has again indicated that the subject matter of claims 11, 12, 14, 19-21, 23, 24, 27, 33, 34, 39, 40, 48, 49, 51-53, 55, 56 and 59 would be allowable if those claims were written to include the features of the parent claims. The present amendment places these claims in condition for allowance as suggested by the Examiner.

However, to the extent that the present office action does not expressly include any rejection under 35 U.S.C. § 112,

it appears that the request to amend claims 11 and 12 to circumvent that rejection herein is a typographical error. Office Action ¶ 8. Thus, the form of claims 11 and 12 have been herein changed solely to include the features of their parent claims.

(2) Independent claims 36 and 62

Applicant also respectfully requests reconsideration of claims 36 and 62 and their dependent claims (37, 38 and 63-65). Claims 36 and 62 stand rejected in view of Duffy et al. (U.S. Patent No. 6,364,845) ("*Duffy*"). The Examiner asserts that *Duffy* discloses means for generating an auditory cognitive exertion exercise at col. 17, lines 43-44. The relevant paragraph reads as follows:

Trials began with an audible tone indicating that central fixation was required within 1 second. A visual stimulus was then presented... The visual stimuli were followed by a pair of tones to prompt a push button response.

Duffy, col. 17, lines 43-49(emphasis added).

Nevertheless, Applicant submits that *Duffy* does not disclose an apparatus capable of providing "auditory signals related to at least one of said visual cognitive exertion exercises" as recited in claim 36 of the application. The above-cited paragraph clearly demonstrates that auditory signals in *Duffy* merely serve:

- (a) to indicate the beginning of the exercise, and/or
- (b) to prompt a response from the patient.

It further follows that the auditory signals in *Duffy* are not disclosed as having any cognitive context nor would they inherently have such a context. Therefore, such auditory

signals cannot form part of an auditory cognitive exertion exercise as required by claims 36 and 62.

As a result, Applicant submits that *Duffy* does not disclose an apparatus providing a visual cognitive exertion exercise and an auditory cognitive exertion exercise including one or more auditory signals related to that visual cognitive exertion exercise.

Moreover, the language of claims 36 and 62 of the patent application clearly indicates that a visual cognitive exertion exercise and an auditory cognitive exertion exercise are provided in concurrent mode. This feature is neither disclosed nor alluded to in *Duffy*. The importance of this feature of the present patent application arises from the synergistic effect of visual and auditory stimulation of the patient.

We therefore submit that the inventions disclosed in claims 36 and 62 are novel and inventive over the prior art cited by the Examiner. To this end, Applicant submits that no *prima facie* obviousness rejection has been presented. Accordingly, Applicant respectfully requests that the Examiner withdraw the rejection of these claims.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone applicant's

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attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: November 27, 2006

Respectfully submitted,

By 

Raymond B. Churchill, Jr.

Registration No.: 44,617

LERNER, DAVID, LITTENBERG,

KRUMHOLZ & MENTLIK, LLP

600 South Avenue West

Westfield, New Jersey 07090

(908) 654-5000

Attorney for Applicant

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